

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OMARI JUMAPILI,)	
)	CASE NO. C13-1026-RSL-MAT
Petitioner,)	
)	
v.)	REPORT AND RECOMMENDATION
)	
ICE FIELD OFFICE DIRECTOR,)	
)	
Respondent.)	
_____)	

I. INTRODUCTION AND SUMMARY CONCLUSION

On June 13, 2013, petitioner Omari Jumapili, an alien in the custody of the United States Immigration and Customs Enforcement (“ICE”), filed a pro se petition for writ of habeas corpus under 28 U.S.C. § 2241, challenging his detention and seeking supervised release or a bond hearing. (Dkt. 1.) Respondent has filed a motion to dismiss, arguing, *inter alia*, that petitioner is not entitled to habeas relief because he was already provided a bond hearing before an Immigration Judge and was granted release on bond. (Dkt. 6.)

For the reasons set forth below, the Court recommends that respondent’s motion to dismiss be GRANTED, and this matter be DISMISSED with prejudice.

01 II. BACKGROUND AND PROCEDURAL HISTORY

02 Petitioner is a native and citizen of Tanzania who was admitted to the United States on
03 March 23, 2008, as an immigrant. (Dkt. 6, Exh. A at 31-38.) On November 2, 2012,
04 petitioner was taken into immigration custody and detained without bond. (Dkt. 6, Exh. A at
05 27, 57.) Petitioner was served with a Notice to Appear, charging him with removability under
06 8 U.S.C. § 1227(a)(2)(A)(ii), for having been convicted of two crimes involving moral
07 turpitude, not arising out of a single scheme of criminal misconduct. (Dkt. 6, Exh. A at 55-56.)

08 On January 28, 2013, petitioner received a bond redetermination hearing before an
09 Immigration Judge. (Dkt. 6, Exh. A at 26, 54.) The Immigration Judge refused to set a bond
10 amount, indicating that she lacked jurisdiction to redetermine petitioner's custody under 8
11 C.F.R. § 1003.19(h)(2)(i)(D) because petitioner was subject to mandatory detention under 8
12 U.S.C. § 1226(c)(1). (Dkt. 6, Exh. A at 52-54.) Petitioner appealed the Immigration Judge's
13 bond decision to the Board of Immigration Appeals ("BIA"), which affirmed the decision on
14 April 30, 2013. (Dkt. 6, Exh. A at 24.)

15 On May 9, 2013, petitioner renewed his motion to redetermine his custody status
16 pursuant to *Rodriguez-Robbins v. Holder*, 715 F.3d 1127 (9th Cir. 2013) (requiring a bond
17 hearing for aliens in the Central District of California who have been in custody for 180 days
18 pursuant to 8 U.S.C. § 1226(c) or 8 U.S.C. § 1225(b)). (Dkt. 6, Exh. A at 15, 22.) ICE also
19 filed a motion on May 14, 2013, requesting that petitioner receive another bond hearing based
20 on the injunction in *Franco-Gonzalez v. Holder*, Case No. CV 10-02211 DMG (DTBx) (C.D.
21 Cal. April 23, 2013) (holding that aliens are entitled to a bond hearing after 180 days in
22 detention).

01 On May 30, 2013, the Immigration Judge conducted a new bond hearing based on the
02 injunction in *Franco-Gonzalez*. (Dkt. 6, Exh. A at 14-17, 41-44.) The Immigration Judge
03 found that the Department of Homeland Security (“DHS”) had failed to meet its burden of
04 proving that continued detention was justified, and ordered petitioner released under bond of
05 \$6,000. *Id.* Petitioner appealed the Immigration Judge’s bond decision to the BIA. (Dkt. 6,
06 Exh. A at 2-12.) His appeal is currently pending. (Dkt. 6 at 4, Exh. A at 44.)

07 On June 13, 2013, petitioner filed the instant habeas petition, seeking supervised release
08 or another bond hearing. (Dkt. 1.) On June 16, 2013, petitioner filed another motion for bond
09 redetermination. The Immigration Judge denied the motion on June 20, 2013, finding
10 petitioner had failed to demonstrate a material change in circumstances since the prior bond
11 hearing in accordance with 8 C.F.R. § 1003.19(e). (Dkt. 6, Exh. A at 44.) On July 25, 2013,
12 respondent filed a motion to dismiss. (Dkt. 6.) Petitioner did not file a reply.

13 III. DISCUSSION

14 A. Jurisdiction

15 Petitioner brings this action pursuant to 28 U.S.C. § 2241, which authorizes the district
16 court to grant a writ of habeas corpus whenever a petitioner is “in custody in violation of the
17 Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). A federal court
18 has subject matter jurisdiction under § 2241(c)(3) if two requirements are satisfied: (1) the
19 petitioner is “in custody,” and (2) the custody is “in violation of the Constitution or laws or
20 treaties of the United States.” 28 U.S.C. § 2241(c)(3); *Maleng v. Cook*, 490 U.S. 488, 490
21 (1989). The Court has habeas jurisdiction under § 2241 because petitioner was detained within
22 its jurisdiction at the time he filed his petition, and he asserts that his detention is unlawful.

01 In addition, review is not precluded by petitioner's failure to exhaust his administrative
02 remedies by appealing the Immigration Judge's bond decision to the BIA and awaiting the
03 BIA's decision. "[Section 2241] does not specifically require petitioners to exhaust direct
04 appeals before filing petitions for habeas corpus." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047
05 (9th Cir. 2001), *overruled on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30
06 (2006). Nevertheless, the Ninth Circuit requires, "as a prudential matter, that habeas
07 petitioners exhaust available judicial and administrative remedies before seeking relief under §
08 2241." *Id.*; *see also Singh v. Holder*, 638 F.3d 1196, 1203 n.3 (9th Cir. 2011). Courts may
09 require prudential exhaustion if "(1) agency expertise makes agency consideration necessary to
10 generate a proper record and reach a proper decision; (2) relaxation of the requirement would
11 encourage the deliberate bypass of the administrative scheme; and (3) administrative review is
12 likely to allow the agency to correct its own mistakes and to preclude the need for judicial
13 review." *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003).

14 Here, exhaustion of petitioner's appeal to the BIA on the issue of bond is not required
15 because (1) the BIA record and expertise on this issue is not necessary to generate a proper
16 record and reach a proper decision, (2) this waiver will not encourage future habeas petitioners
17 to attempt to bypass administrative review, and (3) a review of this issue by the BIA would not
18 preclude the need for judicial review. Accordingly, the interests of justice require waiver.

19 B. Pre-Removal Period Detention

20 Title 8 U.S.C. § 1226(a) provides the framework for the arrest, detention, and release of
21 aliens in removal proceedings. That provision provides the Attorney General with
22 discretionary authority to release an alien on bond or conditional parole pending the completion

of removal proceedings. *See id.* Section 1226(a) provides, in part, as follows:

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) of this section and pending such decision, the Attorney General –

(1) may continue to detain the arrested alien; and

(2) may release the alien on –

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole . . .

8 U.S.C. § 1226(a).

After an alien is arrested and taken into immigration custody, the local ICE office makes an initial custody determination, including the setting of bond. *See* 8 C.F.R. § 236.1(c)(8), 236.1(d). After the initial custody determination, the alien may request a bond redetermination by an Immigration Judge. *See* 8 C.F.R. § 236.1(d). The alien may also appeal the Immigration Judge’s bond determination to the BIA. *See* 8 C.F.R. § 236.1(d)(3). Once an Immigration Judge has made an initial bond redetermination, an alien’s request for a subsequent bond redetermination must be made in writing and must show that the alien’s circumstances have changed materially since the prior bond redetermination. *See* 8 C.F.R. § 1003.19(e).

In making a bond decision, “an Immigration Judge must consider whether an alien who seeks a change in custody status is a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk.” *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (citing *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976)). An Immigration Judge may also consider any number of discretionary factors, including:

(1) whether the alien has a fixed address in the United States; (2) the alien’s length of residence in the United States; (3) the alien’s family ties in the United

01 States, and whether they may entitle the alien to reside permanently in the United
02 States in the future; (4) the alien's employment history; (5) the alien's record of
03 appearance in court; (6) the alien's criminal record, including the extensiveness
04 of criminal activity, the recency of such activity, and the seriousness of the
05 offenses; (7) the alien's history of immigration violations; (8) any attempts by the
06 alien to flee persecution or otherwise escape authorities, and (9) the alien's
07 manner of entry to the United States.

08 *Matter of Guerra*, 24 I&N Dec. at 40.

09 In this case, the record shows that petitioner was afforded a bond redetermination
10 hearing before an Immigration Judge and was provided the opportunity to submit evidence in
11 support of his release. In determining whether petitioner was entitled to bond, the Immigration
12 Judge properly considered the factors set forth in *Matter of Guerra*, including petitioner's
13 length of residence in the United States, petitioner's family ties, petitioner's potential available
14 relief from removal, petitioner's employment history, and petitioner's criminal history. (Dkt.
15 6, Exh. A at 14-17, 41-44.) Additionally, petitioner exercised his right to appeal the
16 Immigration Judge's decision to the BIA. (Dkt. 6, Exh. A at 2-12.) Accordingly, the Court
17 finds no procedural deficiencies in the bond proceedings.

18 It is well established that the Court lacks habeas jurisdiction to review the Attorney
19 General's discretionary decision under 8 U.S.C. § 1226(e), including the amount of bond set by
20 an Immigration Judge. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1058 (9th Cir. 2008)
21 ("alien may appeal the IJ's bond decision to the BIA, *see* 8 C.F.R. § 236.1(d), but discretionary
22 decisions granting or denying bond are not subject to judicial review, *see* § 1226(e)."). That
provision provides, "The Attorney General's discretionary judgment regarding the application
of this section shall not be subject to review. No court may set aside any action or decision by
the Attorney General under this section regarding the detention or release of any alien or the

01 grant, revocation, or denial of bond or parole.” 8 U.S.C. § 1236(e). Citing this provision, the
02 Ninth Circuit has held that courts are prohibited from reviewing the reasonableness of a bond
03 amount set by an Immigration Judge, even where the petitioner cannot afford to post it. *See*
04 *Prieto-Romero*, 534 F.3d at 1067.

05 Although the Court retains jurisdiction to review discretionary decisions where the
06 detention violates due process or exceeds statutory authority, *Gutierrez-Chavez v. INS*, 298
07 F.3d 824, 828 (9th Cir. 2002), petitioner fails to articulate any constitutional or statutory claim.
08 Accordingly, the Court agrees with respondent that this action should be dismissed because
09 petitioner has already received all of the benefits of due process to which he is entitled. As the
10 Court can provide no other relief, petitioner’s habeas petition should be dismissed.

11 IV. CONCLUSION

12 For the foregoing reasons, the Court recommends that respondent’s motion to dismiss
13 be GRANTED, and this matter be DISMISSED with prejudice. A proposed order
14 accompanies this Report and Recommendation.

15 DATED this 16th day of September, 2013.

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18 Mary Alice Theiler
19 Chief United States Magistrate Judge
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